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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MONTEREY BAY MILITARY HOUSING,
LLC, CLARK PINNACLE MONTEREY BAY,
LLC, CLARK MONTEREY PRESIDIO, LLC,
CALIFORNIA MILITARY COMMUNITIES,
LLC, CLARK PINNACLE CALIFORNIA
MILITARY COMMUNITIES, LLC and CLARK
IRWIN, LLC,

Plaintiffs;
v.
PINNACLE MONTEREY LLC, PINNACLE
IRWIN, LLC, AMERICAN MANAGEMENT
SERVICES CALIFORNIA, INC., AMERICAN
MANAGEMENT SERVICES LLC, GOODMAN
REAL ESTATE, INC., GOODMAN
FINANCIAL SERVICES, INC., STANLEY
HARRELSON and JOHN GOODMAN,

Defendants

Case No. 5:14-CV-03953-BLF-HRL

**DEFENDANTS' MOTION *IN LIMINE*
NO. 1 TO EXCLUDE REFERENCES TO
OTHER CIVIL AND CRIMINAL LEGAL
PROCEEDINGS**

Pretrial Conf.: July 9, 2015
Trial: August 3, 2015

Judge: Honorable Beth Labson Freeman
Dept.: Courtroom 3, 5th Floor

1 PINNACLE IRWIN, LLC and PINNACLE
2 MONTEREY, LLC,

3 Plaintiffs,
4 v.
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6 CLARK REALTY CAPITAL, LLC, CLARK
7 PINNACLE MONTEREY BAY LLC, CLARK
8 PINNACLE CALIFORNIA MILITARY
9 COMMUNITIES, LLC, and DOES 1-25,
10 INCLUSIVE,

11 Defendants.
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13 AMERICAN MANAGEMENT SERVICES
14 CALIFORNIA INC. AND AMERICAN
15 MANAGEMENT SERVICES LLC (D/B/A
16 PINNACLE),

17 Counterclaimants,
18 v.
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20 MONTEREY BAY MILITARY HOUSING LLC
21 AND CALIFORNIA MILITARY
22 COMMUNITIES LLC
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24 Counterdefendants.
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1 As this Court is aware, the parties' eastern affiliates are engaged in a related action styled *Fort*
 2 *Benning Family Communities LLC and Fort Belvoir Residential Communities LLC v. American*
 3 *Management Services East LLC and American Management Services LLC*, No. SU10CV2025-F
 4 (Muscogee County Georgia). That case is currently pending on appeal. In May 2015, Plaintiffs also
 5 filed a parallel fraudulent transfer action (which includes several of the same plaintiffs and defendants as
 6 the instant action) styled *Fort Benning Family Communities LLC, Fort Belvoir Residential Communities*
 7 *LLC, Monterey Bay Military Housing LLC and California Military Communities LLC v. American*
 8 *Management Services East LLC, American Management Services LLC and American Management*
 9 *Services California, Inc., et al.*, No. 15A 05259-5 (Gwinnett County Georgia).

10 There is also an ongoing criminal investigation in the Eastern District of Virginia related to this
 11 matter. AMS's former maintenance director at Fort Belvoir, Eddie Hudspeth, was fired in 2010 after he
 12 admitted to taking cash and checks from a vendor at the project. He was then investigated by the U.S.
 13 Attorney for the Eastern District of Virginia. In March 2015 he pled guilty to a single count of soliciting
 14 and accepting kickbacks. He was sentenced to a 24 month prison term in May 2015. One of the vendors
 15 at Fort Belvoir, Phil Robrahn, pled guilty to similar charges related to the same facts. Recently, the U.S.
 16 Attorney for the Eastern District of Virginia has also served grand jury subpoenas on several present and
 17 former Pinnacle employees, including Dale Andrews, AMS's former investment manager at Fort Belvoir;
 18 Ron Calloway, a former maintenance director at Monterey; Rick Wimer, the former community director
 19 at Irwin; Wes Campbell, the current maintenance director at Irwin; Jerry Vinson, a current maintenance
 20 supervisor at Irwin; and Midi Lopez, the current scheduler at Irwin.

21 Defendants move in limine to preclude Plaintiffs from making reference to the foregoing civil
 22 actions and criminal proceedings at trial in this matter. In particular, Defendants move to exclude any
 23 reference to rulings against Defendants in the Muscogee County Georgia action, including but not limited
 24 to discovery sanctions and granting of summary judgment on certain claims by defendants. Defendants
 25 move to exclude any reference to the Gwinnett County action, which is duplicative of Plaintiffs' RICO
 26 fraudulent transfer alleged predicate acts in the instant action. Defendants also seek to exclude Plaintiffs
 27 from any mention at trial whatsoever of criminal investigations or proceedings related to any of
 28

1 defendants, their affiliates, or present and former employees. All these proceedings are both irrelevant,
 2 and highly prejudicial, to defendants' ability to defend the issues in the present civil action in California.

3 Based on Plaintiffs' motion for summary judgment, Plaintiffs will seek to introduce evidence at
 4 trial of legal findings or rulings made by the Georgia court, including the 3/20/14 Ga. Summ. J. Order.
 5 [Doc 151] at 1, 7-8. Another court's legal findings - based on completely different facts, parties and
 6 employees - are not however probative of the allegations in this case. This type of evidence is irrelevant
 7 and carries with it a high risk of prejudice. *See Hill v. Novartis Pharm. Corp.*, 944 F. Supp. 2d 943, 952
 8 (E.D. Cal. 2013) (excluding evidence about other litigation involving same drug therapy because it would
 9 be irrelevant and confusing under rules 401, 402, and 403); *In re Homestore.com, Inc.*, No. CV 01-11115
 10 RSWL CWX, 2011 WL 291176, at *1 (C.D. Cal. Jan. 25, 2011) (granting motion in limine, ruling
 11 "reference to or evidence of Plaintiff's involvement in other litigation prior to this Action is also
 12 irrelevant and carries with it a high risk of prejudice."). Under similar circumstances, the Court in
 13 *Applied Materials, Inc. v. Advanced Semiconductor Materials Am., Inc.* granted a motion in limine to
 14 exclude evidence of liability findings from another case between the parties, recognizing that "the
 15 prejudicial effect of the evidence would seem to outweigh its probative value, as it would be hard to get
 16 into Judge Ingram's finding without a discussion of the outcome of the case." No. C 92-20643 RMW,
 17 1995 WL 261407, at *7 (N.D. Cal. Apr. 25, 1995). The Georgia action, which is pending on appeal, is a
 18 different case, about different parties, involving a different set of facts. The legal findings and rulings
 19 made in that case have no bearing on the issues in this case. Accordingly, the prejudicial effect of
 20 allowing Plaintiffs to present evidence or argument related to the Georgia action substantially outweighs
 21 the evidence's probative value. *See* Fed. R. Evid. 403. Moreover, because of the overlap of allegations
 22 between that matter and the case at bar, referencing rulings or findings from Georgia would inevitably
 23 lead to jury confusion or carry undue weight in the minds of the jurors. *Id.*

24 The prejudice and risk of jury confusion is equally great by allowing evidence or references at
 25 trial about the parallel fraudulent transfer action pending in Gwinnett County, Georgia. That action
 26 includes the two California Plaintiffs, the Georgia Plaintiffs, certain California and Georgia defendants,
 27 as well as the "indispensable parties" that Plaintiffs failed to add in seeking leave to file their Fifth
 28 Amended Complaint here. [Doc 172]. The existence of this action has no bearing on this case, and a

1 jury could easily be misled by hearing about a parallel case premised on the same conduct at issue in this
 2 litigation (indeed, including several of the same parties). *See* Fed. R. Evid. 402, 404. Furthermore, this
 3 Court already rejected Plaintiffs' attempt to bring their fraudulent transfer case in this forum. [Doc 172].
 4 Plaintiffs should not be allowed to effectively litigate that claim here by referencing a parallel complaint
 5 that has not yet been answered, subject to motions to dismiss or resulted in any discovery.

6 Under Rules 402 and 403, Plaintiffs should be barred from referencing any of the pending
 7 criminal proceedings at trial because they are irrelevant and highly prejudicial. Criminal proceedings that
 8 involve different projects and different employees have no bearing on the claims at issue in this litigation
 9 and cannot possibly be relevant.¹ *Zavala v. Chrones*, No. 1:09-CV-01352-BAM PC, 2013 WL 486280,
 10 at *6 (E.D. Cal. Feb. 6, 2013) (granting motion to exclude letters Plaintiffs wrote to the Grand Jury
 11 seeking the filing of criminal charges, reasoning “evidence demonstrating that Plaintiff contacted the
 12 Grand Jury about a criminal action and that the Grand Jury responded is irrelevant to whether Defendants
 13 were deliberately indifferent.”); *Elseth ex rel. Elseth v. Elorduy*, No. 2:08-CV-02890-GEB, 2011 WL
 14 3794901, at *3 (E.D. Cal. Aug. 25, 2011) (excluding report prepared by grand jury as irrelevant); *J.W. v.*
 15 *City of Oxnard*, No. CV 07-06191 CAS(SHX), 2008 WL 4810298, at *2 (C.D. Cal. Oct. 27, 2008)
 16 (finding “evidence regarding the fact that the criminal investigation took place, the procedures used, and
 17 the opinions of those involved is not relevant and may cause unfair prejudice” for the purposes of
 18 determining liability). Moreover, with regard to the pending grand jury investigation in California, there
 19 has been no indictment or charges made against any of the present or former AMS employees.
 20 Referencing or presenting evidence of a criminal investigation that is based upon nothing more than
 21 unsubstantiated allegations would be highly prejudicial to Defendants. *See* Fed. R. Evid. 403; *Barnett v.*
 22 *Gamboa*, No. 1:05-CV-01022-BAM PC, 2013 WL 174077, at *2 (E.D. Cal. Jan. 16, 2013) (granting
 23 motion in limine to exclude references to the criminal case against defendant because “there is no
 24 indication that evidence of the pending charges against Defendant Duran would serve any purpose other
 25 than impermissibly attacking his character and would be unely [sic] prejudicial.”); *see also Schmidt v.*
 26 *Klinman*, No. 05 C 2134, 2005 WL 6939158, at *6 (N.D. Ill. Dec. 2, 2005) (excluding evidence of

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 28 ¹ The plea agreements and related criminal indictments and court filings related to Mr. Hudspeth and Mr.
 Robrahn would also be inadmissible hearsay. Fed. R. Evid. 801, 802.

1 ongoing criminal investigation because “[t]he probative value of an ongoing criminal investigation is
 2 substantially outweighed by danger of unfair prejudice, confusion of the issues and jury confusion.”).

3 The same principles also warrant precluding Plaintiffs from referencing Eddie Hudspeth’s March
 4 2015 plea agreement and subsequent prison term. Mr. Hudspeth is a former maintenance director at Fort
 5 Belvoir and did not work for the Monterey or Irwin projects. His criminal proceedings are both irrelevant
 6 and highly prejudicial to Defendants’ ability to address the issues relevant to the Monterey and Irwin
 7 projects. This Court has, under similar circumstances, excluded plea agreements because their probative
 8 value is substantially outweighed by the risk of prejudice. *See Ligon v. Lafuaci*, No. 13-CV-02875-
 9 RMW, 2015 WL 363723, at *1 (N.D. Cal. Jan. 22, 2015) (granting motion in limine to exclude plea
 10 agreement pursuant to Rule 403).

11 Plaintiffs should not be permitted to use legal findings or rulings from other courts to establish
 12 liability in this action, or to assassinate defendants’ character. Plaintiffs should likewise be precluded
 13 from referencing or introducing evidence related to the criminal proceedings discussed above. Such
 14 evidence is irrelevant under Rule 402; it is also unfairly prejudicial and risks confusing the jurors under
 15 Rule 403. The plea agreements and related indictments and criminal filings related to Mr. Hudspeth and
 16 Mr. Robrahn also constitute inadmissible hearsay under Rules 801 and 802.

17
 18 DATED: June 25, 2015

GREENBERG TRAURIG, LLP

20 By /s/ William J. Goines

21 William J. Goines
 22 Thomas E. Dutton
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23 Attorneys for Pinnacle Monterey LLC, Pinnacle Irwin LLC,
 24 American Management Services California Inc., American
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1 DATED: June 25, 2015

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Attorneys for Defendants John Goodman and Goodman
Real Estate, Inc.

ATTESTATION CLAUSE

I, William J. Goines, am the ECF User whose ID and password are being used to file this DEFENDANTS' MOTION *IN LIMINE* NO. 1 TO EXCLUDE REFERENCES TO OTHER CIVIL AND CRIMINAL LEGAL PROCEEDINGS. In compliance with Civil L.R. 5-1(i), I hereby attest that Karen P. Kimmey, attorney at Farella Braun & Martel LLP, concurred in this filing.

DATED: June 25, 2015

GREENBERG TRAURIG, LLP

By: /s/ William J. Goines
William J. Goines